

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**MISC.CIVIL APPLICATION - FOR TRANSFER No. 2060 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE RAVI R.TRIPATHI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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DHIRSHINHBHAI KARSANBHAI BARAD PRESIDENT AND ANOTHER
Versus
KANJIBHAI PARBARBHAI MOTI AND OTHERS

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Appearance :

MR PS CHAMPANERI for Applicant(s) : 1 - 2.
MR HARIN P RAVAL for Opponent(s) : 1 - 3.
MR BM MANGUKIYA for Opponent(s) : 4 - 14.
- for Opponent(s) : 0.0.0

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI**Date : 22/02/2006****ORAL JUDGMENT**

1. This application is filed by Shri Dhirsinhbhai Karsanbhai Barad as the President of Shri Bhagvanbhai Bhabhabhai Smarak Trust. The Trust is also joined as applicant No.2. The applicants have prayed in paragraph

No.14 A) that, "This Hon'ble Court will be pleased to call for the records and proceedings of Civil Miscellaneous Application No.45 of 2005 from the District Court, Junagadh, to peruse it and examine the same and after hearing the parties, be pleased to quash and set aside the impugned judgment and order dated 6th September, 2005 passed by the District Court, Junagadh in Civil Miscellaneous Application No.45 of 2005."

2. Learned Principal District Judge, Junagadh by his judgment and order dated 6th September 2005 is pleased to allow the application (Civil Miscellaneous Application No.45 of 2005) and order transfer of the Trust Suit No.1 of 2005 pending before the District Court Junagadh to 2nd Fast Track Court, Junagadh at Veraval, sitting at Una.

3. The present application was filed on 5th October 2005, wherein On 6th October 2005, this Court (Coram: J.R.Vora, J.) passed the following order:

"1.

2. **RULE** returnable on **24th October, 2005**. In the meanwhile, by way of only purely temporary arrangement, the order passed by the trial Court on 6th September, 2005 below application Ex.11 staying the order impugned in this application is further

extended till 24th October, 2005. Learned advocate for the applicants is permitted to place on record the copy of application Ex.11. The Office is directed to receive the said paper from the learned advocate for the applicants and place on record. Direct service is permitted."

On 24th October 2005, the matter was adjourned to 28th November 2005 and thereafter, it was getting adjourned from time to time. On 9th January 2006, a request was made on behalf of Mr.B.M.Mangukiya, the learned advocate appearing for respondent Nos.4 to 14 for adjournment. The request was granted. The matter was adjourned to 1st February 2006. On 1st February 2006, it was reported that learned advocate Mr.Mangukiya has filed leave note and therefore, the matter was adjourned for today, i.e. 22nd February 2006. Today when the matter is called out, Mr.Harin P.Raval, the learned advocate appearing for the contesting respondents is not present.

4. Heard the learned advocates.

5. Mr.P.S.Champaneri, the learned advocate for the applicants submitted that the learned Principal District Judge has committed an error in allowing the Civil Misc.Application No.45 of 2005. The learned advocate

submitted that the learned District Judge has committed an error in holding that under Section 24 of the Civil Procedure Code, there is unbridled power to transfer any case. The learned advocate invited the attention of this Court to the provisions of Section 24 of the Code of Civil Procedure. Same is reproduced for the ready perusal:

"24. General power of transfer and withdrawal.- (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court of the District Court may at any stage -

(a) transfer any suit, appeal or other proceedings pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceedings pending in any Court subordinate to it, and

(i) try to dispose of the same; or

(ii).....

(iii).....

(2)

(3) For the purpose of this section, -

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b)

(4)

(5)"

The learned advocate submitted that the Trust Suit No.1 of 2005 is ordered to be transferred to 2nd Fast Track Court, Junagadh at Veraval, sitting at Una. He submitted that firstly that Court is not subordinate to the Principal District Court in true sense of the term, **'subordinate court'**. In the alternative, he submitted that the said Court is not **competent to try the Trust Suit No.1 of 2005.**

The learned advocate submitted that in fact, the Trust Suit No.1 of 2005, as the learned Principal District Judge himself has incorporated in the narration of the facts is filed after obtaining specific permission. The observations are: "the petitioners have stated that after obtaining permission from the Charity Commissioner, the petitioners/original plaintiffs have

filed the Trust Suit before this Court."

The learned advocate invited the attention of the Court to provisions of Sections 50 and 51 of the Bombay Public Trusts Act, 1950 (hereinafter referred to as, 'the Act'). Section 50 of the Act pertains to, **'Suits relating to public trusts'** whereas Section 51 pertains to, **'Consent of Charity Commissioner for institution of suit.'** For the purpose of appreciating this submission made by the learned advocate and the controversy involved in the matter, provisions of Section 51 are relevant and the same are reproduced hereinbelow:

51. Consent of Charity Commissioner for institution of suit. - (1) If the persons having an interest in any public trust intend to file a suit of the nature specified in section 50, they shall apply to the Charity Commissioner in writing for his consent. The Charity Commissioner, after hearing the parties and after making such inquiry as he thinks fit, may within a period of six months from the date on which the application is made, grant or refuse his consent to the institution of such suit. The order of the Charity Commissioner refusing his consent shall be in writing and shall state the reasons for the refusal.

(2) If the Charity Commissioner refuses his consent

to the institution of the suit under sub-section (1) the persons applying for such consent may file an appeal to the *Bombay Revenue Tribunal constituted under the Bombay Revenue Tribunal Act, 1939, (Bom.XII of 1939) in the manner provided by this Act.

(3) In every suit filed by persons having interest in any trust under section 50, the Charity Commissioner shall be a necessary party.

(4)"

6. At this juncture, it will not be inappropriate to refer to the definition of the term, 'Court', which is defined in sub-section (4) of Section 2 of the Act. Sub-section (4) of Section 2 reads as under:

"(4) "Court" means in the Greater Bombay, the City Civil Court and **elsewhere the District Court.**"

In view of the aforesaid, it is clear that as provided in the Act, 'a suit' is to be filed in 'the Court' and 'the Court' is defined to be 'the District Court', if the place is outside the Greater Bombay. That being so, the learned Principal District Judge could not have allowed the Civil Misc.Application No.45 of 2005 application and could not have transferred the Trust Suit

No.1 of 2005 pending in the District Court to 2nd Fast Track Court, Junagadh at Veraval, sitting at Una.

7. Mr.B.M.Mangukiya, the learned advocate appearing for respondent Nos.4 to 14 submitted that he supports the submissions made by the learned advocate Mr.Champaneri. He submitted that in addition to what learned advocate Mr.Champaneri has submitted, he will like to add that when the suit is to be filed under a specific Act before a specific Court, the general provisions of the Code of Civil Procedure do not apply and the same could not have been made applicable by the learned Principal District Judge. He submitted that to that extent, the judgment and order of the learned Principal District Judge is erroneous and requires to be quashed and set aside by this Court.

8. In the considered opinion of this Court, on a plain reading of Section 24 of the Code of Civil Procedure, the judgment and order of the learned Principal District Judge cannot be upheld. Clause (a) of Sub-section (1) of Section 24 of the Code provides two conditions (1) a transfer can be made to any Court subordinate to it and (2) the Court which is competent to try. In the opinion of this Court, when the Court is defined under the Act

and the Court of Principal District Judge is conferred power to try the suits relating to the trusts, which are filed after obtaining the consent of the Charity Commissioner, such suits have a special status and they do not stand at par with an ordinary suit. That being so, when the suit is instituted under the provisions of a specific Act, the same should have been dealt with in light of the provisions of that particular Act. That being so, this Court is of the opinion that the learned Principal District Judge has erred in allowing the Civil Miscellaneous Application No.45 of 2005 and transferring the Trust Suit No.1 of 2005 to 2nd Fast Track Court, Junagadh at Veraval, sitting at Una.

9. In the result, this Misc.Civil Application succeeds. The judgment and order dated 6th September 2005 passed by the learned Principal District Judge allowing the Civil Miscellaneous Application No.45 of 2005 is hereby quashed and set aside. Rule is made absolute with no order as to costs.

10. At this juncture, when the dictation of the judgment is over, learned colleague of Mr.Harin P.Raval appeared and tendered apology of Mr.Raval for not remaining present before the Court. The same is noted.

(RAVI R. TRIPATHI, J.)

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